

UNITED STATES
v.
ROSE AND LLOYD BACKEBERG

IBLA 72-258

Decided December 19, 1972

Appeal from a decision (Montana 1821) by Administrative Law Judge Dent D. Dalby, 1/ declaring a mining claim null and void.

Affirmed.

Mining Claims: Discovery: Generally

To constitute a valid discovery upon lode mining claims there must be a discovery on the claim of a lode or vein bearing mineral which would warrant a prudent man in the expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

APPEARANCES: Lloyd Backeberg, pro se; Robert W. Parker, Esq., Office of the General Counsel, United States Department of Agriculture, for the United States.

OPINION BY MR. RITVO

Appellants, holders of an interest in the Lonestar Quartz Lode Mining Claim, have appealed to the Secretary of the Interior from a decision by Administrative Law Judge Dent Dalby declaring the Lonestar null and void for failure to show a valid discovery of a valuable mineral deposit.

The Lonestar was located on October 12, 1950, by Mary A. Noren. The claim is situated in section 8, T. 13 N., R. 7 W., P.M., Lewis and Clark County, Montana, in the Helena National Forest. On July 18, 1966, Mrs. Noren quitclaimed an undivided three-quarters interest to Lloyd and Rose Backeberg, contestees in the present case. The other contestees are G. A. Kirby and Gertrude Kirby, claiming a right of

1/ The change of title of the hearing officer from "Hearing Examiner" to "Administrative Law Judge" was effectuated pursuant to order of the Civil Service Commission, 37 F.R. 16787 (August 19, 1972).

ownership to certain buildings on the claim through purchase at a county tax sale. The Kirbys' reply to the contestant's complaint stated that they had been forbidden to enter the land by the Backebergs, under fear of trespass. The Kirbys failed to attend the hearing and have not submitted an appeal to Judge Dalby's decision.

A complaint dated December 14, 1970, was filed by the Billings, Montana, Land Office of the Bureau of Land Management at the request of the Forest Service, United States Department of Agriculture charging that: (1) no discovery of a valuable mineral deposit exists within the claim; (2) the land within the claim is nonmineral in character; and (3) the claim is not being held in good faith for mining purposes. The Backebergs answered the complaint with a blanket denial and a request that they be given the right to purchase five acres of the claim.

On October 8, 1971, a hearing was held before Judge Dent Dalby in Helena, Montana. The Government called two Forest Service employees to testify regarding mineral examinations which they had made on the Lonestar claim. Billy L. Hicks, a geologist, visited the claim twice, once on August 17, 1967, and again on September 21, 1971. During his 1967 visit, Hicks, accompanied by Backeberg, examined two of the workings on the claim. Hicks took two samples and had them assayed. The assay report found only traces of minerals except for readings of 0.20 percent of lead in both samples and a reading of .05 ounces of silver per ton in one sample.

On Hicks' second visit in 1971, he was accompanied by John B. Burleson, a Forest Service mining engineer, who testified at the hearing. Backeberg was not on the claim during the visit but G. A. Kirby was present. Hicks observed the cabin which was on the claim but he did not take any samples. Burleson, however, took two samples from cuts on the claim and submitted them for assay reports to the Montana Laboratory Company in Philipsburg, Montana. The reports confirmed Hicks' earlier examination -- only traces or no evidence at all of valuable minerals.

Backeberg was called to the witness stand by the Government and also testified in his own behalf. He made no attempt to prove that he had discovered a valuable mineral deposit on the claim. Rather, Backeberg desires to retain the claim because:

Well, I like to prospect. I go up and enjoy myself. It takes my mind off all my troubles here in town. I have done it for years, and I'll probably continue to do

it. I ain't really got the gold bug like some people, but I like to prospect. Tr. 41.

Judge Dalby rejected Backeberg's reasons for wishing to remain on the claim. The Judge concluded that the Lonestar Quartz Lode Mining Claim did not meet the statutory requirements that a valid mineral deposit exist within the limits of the claims, and declared the claim null and void. The Backebergs filed an appeal on January 20, 1972.

The standard applied by the Department of the Interior to determine the validity of mining claims is well established. A discovery sufficient to validate a mining claim has been made

* * * [W]here minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine * * *. Castle v. Womble, 19 L.D. 455, 457.

And where the location is of minerals in a lode or vein

* * * [T]here must be a vein or lode of quartz or other rock in place; the quartz or other rock in place must carry gold or some other valuable mineral deposit; and the two preceding elements, when taken together, must be such as to warrant a prudent man in the expenditure of his time and money in the effort to develop a valuable mine. Jefferson-Montana Copper Mines Co., 41 L.D. 320 (1912).

This test has been accepted by the Courts, United States v. Coleman, 390 U.S. 599, 602 (1968); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); Chrisman v. Miller, 197 U.S. 313, 322 (1905); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969), and cited repeatedly in Departmental decisions; United States v. William J. Bartels Sr., et al., 6 IBLA 124 (1972); Ray L. Stevens, et al., A-31052 (May 14, 1970); East Tintic Consolidated Mining Co., 43 L.D. 79, 81 (1914).

After a thorough review of the record and evidence, this Board concludes that Judge Dalby applied the proper test for discovery of a valuable mineral deposit. Backeberg failed to show any possible existence of valuable minerals on the Lonestar. To the contrary, Backeberg's reasoning was that he wanted five acres so he could

relax and prospect on the weekends. Public land cannot be held for such a purpose under the mining laws.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge Dent Dalby is affirmed.

Martin Ritvo, Member

We concur:

Anne Poindexter Lewis, Member

Newton Frishberg, Chairman.

